IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12373 OF 2023

Rahul Rajendra Adhikari ….Petitioner

V/s.

Income Tax Officer, Panvel & Ors. ….Respondents

Mr. Laukik Palekar a/w. Mr. Hemanshu Patel i/b. Mr. Akshay Zantye for petitioner.
Mr. Ajeet Manwani a/w. Ms. Samiksha Kanani for respondents – Revenue.

CORAM : K. R. SHRIRAM &
NEELA GOKHALE, JJ.
DATED : 9th OCTOBER 2023

P.C. :

1 Since affidavit in reply is on record, we have taken up this petition for final hearing at this stage itself.

2 Petitioner is impugning a notice dated 29th March 2023 issued under Section 148A(b) of the Income Tax Act, 1961 (the Act), order dated 18th April 2023 under Section 148A(d) of the Act and notice dated 18th April 2023 under Section 148 of the Act on various grounds. The primary ground is that the notice under Section 148A(b) of the Act has been issued to a deceased person and even the order under Section 148A(d) of the Act is not a valid order because the sanction under Section 151 of the Act has been granted without application of mind. In paragraphs 5, 6 and 7 of the petition, petitioner has averred that petitioner had submitted a request via Income Tax Portal to be registered as legal heir of the assessee, the assessee having expired on 23rd July 2020. It is stated in

the petition that the application to be registered as legal heir was made on 10th February 2021. The application was accepted on 11th February 2021 and all those details are available in the Income Tax Portal. Mr. Palekar submitted that subsequently on 12th February 2021 petitioner, as legal heir of the assessee, even filed return of income on behalf of the assessee for Assessment Year 2020-2021 which is also verifiable from the Income Tax Portal. The averments in the petition that petitioner had applied as legal heir of the assessee and the acceptance of the application have not been denied in the affidavit in reply.

3 In the affidavit in reply, all these averments are conveniently skirted. The affidavit in reply only deals with the order passed under Section 148A(d) of the Act. It is stated that no notice under Section 148 of the Act can be issued without undertaking enquiry before assessment under Section 148A of the Act. We find this statement having been made twice in the affidavit in reply, one in paragraph 6.1 and again in paragraph 6.4. It is rather obvious that no such enquiry has been made because if the Assessing Officer had only made such an enquiry or even bothered to verify the Income Tax Portal relating to the deceased assessee, he would have certainly come to know that the assessee is deceased and had died on 23rd July 2020. The notice under Section 148A(b) of the Act has been issued without making the enquiry as mandated under Section 148A of the Act. Therefore, the notice issued under Section 148A(b) of the Act itself

would be bad in law and has to be quashed and set aside. We find support for this view in a judgment of this Court in the matter of ***Dhirendra Bhupendra Sanghvi V/s. Assistant Commissioner of Income Tax Circle – 27(3) & Ors***[1].

4 Since the notice under Section 148A(b) of the Act which is the basic foundation for issuing a notice under Section 148A(d) of the Act itself is invalid, on this ground alone, the order dated 18th April 2023 passed under Section 148A(d) of the Act has to be quashed and set aside.

5 As regards the order issued under Section 148A(d) of the Act read with notice under Section 148 of the Act, Mr. Palekar also states that the approval form under Section 151 of the Act which has been made available alongwith the affidavit in reply also would indicate that there has been total non application of mind by the Assessing Officer, the Additional/Joint Commissioner of Income Tax, who recommended grant of approval as a fit case for issuance of notice under Section 148 of the Act and also the Principal Commissioner of Income Tax, who granted the approval on 18th April 2023.

6 We agree that the approval applied for and granted under Section 151 of the Act exposes the total non application of mind by the Assessing Officer who applied for the approval, the Additional/Joint Commissioner of Income Tax who recommended granting of approval and

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the Principal Commissioner of Income Tax who granted the approval. We say this because Row 9 of the approval form, copy whereof can be found in the affidavit in reply, states "*time limit for current proceedings covered under Section 149(1)(b) – for more than 3 years but not more than 10 years*". The assessment pertains to Assessment year 2019-2020, whereas the notice issued under Section 148A(b) of the Act is dated 29th March 2023 and, therefore, within the three years period.

If we take Row 9 to be correct, then Row 7 indicates "*the quantum of income which has escaped assessment – Rs.3 lakhs*". Therefore, the notice issued under Section 148A(b) of the Act itself could not have been issued.

7 Therefore, if only the Assessing Officer who applied for approval under Section 151 of the Act had only read the approval form, he would have made the required corrections. If only the Additional/Joint Commissioner of Income Tax had read the approval form and the order under Section 148A(d) of the Act and the file relating to the matter, he would not have recommended granting of approval. So also the Principal Commissioner of Income Tax. If he had only read the file, he would have realised that if the time limit for current proceedings is covered under Section 149(1)(b) of the Act, i.e., for more than 3 years but not more than 10 years, he has no power to grant approval and the approval should have been granted by the Principal Commissioner of Income Tax.

8 In the circumstances, the order dated 18th April 2023 under Section 148A(d) of the Act and the consequent notice also dated 18th April 2023 under Section 148 of the Act are hereby quashed and set aside.

9 Petition disposed.

(NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**